

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

| | | |
|-------------------------|---|-----------------------------------|
| DAWN MARIE BALL, | : | Civil No. 1:11-CV-2239 |
| Plaintiff | : | |
| | : | (Chief Judge Kane) |
| v. | : | |
| | : | (Magistrate Judge Carlson) |
| CAMPELL, et al., | : | |
| Defendants | : | |

ORDER

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

Plaintiff Dawn Marie Ball filed a complaint on December 2, 2011. (Doc. No. 1.) On December 9, 2011, Magistrate Judge Carlson issued a Report and Recommendation in which he recommends that the complaint be dismissed without prejudice. (Doc. No. 7.) Plaintiff objects to the recommendation. (Doc. No. 9.) The objections, however, are completely irrelevant to the substance of the Report and Recommendation. Plaintiff focuses her objections on attacking Magistrate Judge Carlson and on discussing her having “help[ed] a fellow prisoner out” by telling “inmate Crystal Chaplin to pull her fishing line in because Sgt. Campbell walked on the pod.” The Court finds no error in Magistrate Judge Carlson’s discussion of the fishing line, but ultimately the fishing line is immaterial. Plaintiff Ball’s claims center on her complaint that as a punishment she was served a food loaf that was “so dry . . . it got stuck in my throat and I could not breath and I almost died.” She claims that being served an insufficiently moist food loaf constitutes an Eighth Amendment violation. Plaintiff further complains that certain items belonging to her were confiscated; however, she acknowledges that those items were replaced. Based on these allegations, Magistrate Judge Carlson found Plaintiff failed to state a claim because she failed to allege conduct by prison officials that rose to the level of a constitutional infraction. Plaintiff does not dispute these findings, and the Court finds no error in them.

ACCORDINGLY, on this 23th day of January 2012, **IT IS HEREBY ORDERED** **THAT** upon a de novo review of Magistrate Judge Carlson's Report and Recommendation (Doc. No. 7) and Plaintiff Dawn Marie Ball's objections thereto (Doc. Nos. 9), the Report and Recommendation (Doc. No. 7) is **ADOPTED** and Plaintiff's complaint is **DISMISSED WITHOUT PREJUDICE** to Plaintiff endeavoring to cure the defects outlined in the Report and Recommendation within twenty days of the date of this order. Failure to timely amend the complaint will result in the complaint being dismissed with prejudice. This matter is referred to Magistrate Judge Carlson for all further proceedings.

S/ Yvette Kane
Yvette Kane, Chief Judge
United States District Court
Middle District of Pennsylvania